



9227-7

0001

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TALECRIS BIOTHERAPEUTICS, INC.,)
and BAYER HEALTHCARE LLC,)

Plaintiffs,)

v.)

BAXTER INTERNATIONAL INC., and)
BAXTER HEALTHCARE CORPORATION,)

Defendants.)

BAXTER HEALTHCARE CORPORATION,)

Counterclaimant,)

v.)

TALECRIS BIOTHERAPEUTICS, INC.,)
and BAYER HEALTHCARE LLC,)

Counterdefendants.)

Statement of counsel on the record taken pursuant
to notice before Renee A. Meyers, Certified Realtime
Reporter and Notary Public, in the law offices of
CONNOLLY BOVE LODGE & HUTZ, LLP, 1007 North Orange
Street, Wilmington, Delaware, on Wednesday, June 27,
2007, beginning at approximately 9:40 a.m., there being
present:

0002

APPEARANCES:

CONNOLLY BOVE LODGE & HUTZ LLP
JEFFREY B. BOVE, ESQ.
JACLYN MASON, ESQ.
1007 North Orange Street
Wilmington, Delaware 19899
for Plaintiffs,

9227-7

22
23
24
25
0003

1 (Guiheen Deposition Exhibit No. 1 was marked
2 for identification.)
3 (Guiheen Deposition Exhibit No. 2 was marked
4 for identification.)
5 (Guiheen Deposition Exhibit No. 3 was marked
6 for identification.)
7 (Guiheen Deposition Exhibit No. 4 was marked
8 for identification.)
9 (Guiheen Deposition Exhibit No. 5 was marked
10 for identification.)

11 MR. BOVE: Good morning. My name is Jeff
12 Bove and I am lead counsel for plaintiffs Talecris
13 Biotherapeutics and Bayer Healthcare in litigation
14 against Baxter International and Baxter Healthcare.

15 With me is my associate, Jaclyn Mason.
16 I would like to ask the court reporter to
17 mark -- or what has previously been marked, rather, I
18 will put on the record, as Guiheen Exhibit No. 1, is a
19 letter from Jaclyn Mason to Annie Rogaski of the law
20 firm of Townsend and Townsend and Crew dated June 20th,
21 2007, which enclosed a plaintiffs' notice of deposition
22 of Lawrence Guiheen.

23 This notice of deposition indicates that on
24 June 27th, 2007, at 9:30 a.m., the deposition of
25 Mr. Guiheen will take place in the law offices of

0004

1 Connolly Bove Lodge & Hutz in Wilmington, Delaware.
2 I'd also like to put on the record what has
3 been marked as Guiheen Deposition Exhibit No. 2, which
4 is a letter from Jaclyn Mason to Megan Chung of Townsend
5 and Townsend indicating a concern and complaint that
6 Baxter did not comply with representations made at the
7 pretrial conference in this matter concerning the
8 expected scope of Mr. Guiheen's trial testimony.

9 Guiheen Exhibit 3, which has been
10 pre-marked, is a June 21st, 2007, letter to the
11 Honorable Gregory M. Sleet from me expressing to the
12 Court our concerns about the misstated scope of
13 Mr. Guiheen's expected trial testimony and the fact that
14 the defendants have not indicated, with certainty,
15 whether they will even call Mr. Guiheen as a trial
16 witness. The letter requests the Court to exclude
17 Mr. Guiheen from testifying at trial on that basis.

18 Guiheen Deposition Exhibit 4 is a letter
19 from me to Jim Gilliland of Townsend and Townsend dated
20 June 25th, 2007, confirming that the plaintiffs intend
21 to proceed with the deposition of Mr. Guiheen as
22 noticed.

23 And, finally, Guiheen Deposition Exhibit No.
24 5 is a letter from me to Jim Gilliland dated June 26th,
25 2007, indicating the plaintiffs intent to proceed with

0005

1 the deposition of Mr. Guiheen as duly noticed and
2 indicating plaintiffs' concern that the defendants must
3 appear consistent with the Federal Rules of Civil
4 Procedure, the Local Rules of the District of Delaware,
5 and what we understand to be long established customary
6 practice in the District of Delaware.

9227-7

We are present at the deposition and ready, willing, and able to proceed as noticed. To my knowledge, there has been no motion for a stay or a protective order filed with the Court, and, therefore, the defendants and Mr. Guiheen are in default of the deposition notice. They are not present here today.

We will now attempt to reach local counsel for the defendants to confirm whether or not Mr. Guiheen will appear as duly noticed.

(Off the record.)

MR. BOVE: Good morning, Phil. This is Jeff Bove and I am at the deposition of Lawrence Guiheen in my office as previously noticed, and I am attempting to reach you in order to confirm that, indeed, Mr. Guiheen and any representative from the defendants will not appear today.

We are leaving you this on voice mail in an effort to contact you. It is now approximately quarter of ten. The deposition was scheduled for 9:30, and

unless we hear promptly back from you, we will assume that neither the defendants nor Mr. Guiheen will appear despite the outstanding notice of deposition.

And, also, Phil, I am placing this on the record as I have communicated it to you. I will talk to you soon.

I believe that concludes our deposition today. Without a witness, we cannot proceed.

(The statement was concluded at 9:48 a.m.)

C E R T I F I C A T E

STATE OF DELAWARE:

:

NEW CASTLE COUNTY:

I, Renee A. Meyers, a Registered Professional Reporter, within and for the County and State aforesaid, do hereby certify that the foregoing statement on the record was taken before me, pursuant to notice, at the time and place indicated; that the statement on the record was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the foregoing statement on the record is a true record; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand this 27th day of June A.D. 2007.

9227-7

18
19
20
21
22
23
24
25

RENEE A. MEYERS
REGISTERED PROFESSIONAL REPORTER
CERTIFICATION NO. 106-RPR
(Expires January 31, 2008)